

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS INC,
 Plaintiff,

v.

ARISTA NETWORKS, INC.,
 Defendant.

Case No. 14-cv-05344-BLF

**OMNIBUS ORDER REGARDING
 DAUBERT SEALING MOTIONS**

[Re: ECF 419, 422, 426, 438, 462, 467, 470,
 475, 476, 491, 494, 498]

Before the Court are the parties' administrative motions to file under seal portions of their briefing and exhibits in connection with the parties' *Daubert* motions. ECF 419, 422, 426, 438, 462, 467, 470, 475, 476, 491, 494, 498. For the reasons stated below, the motions are GRANTED IN PART AND DENIED IN PART.

I. LEGAL STANDARD

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are "more than tangentially related to the merits of a case" may be sealed only upon a showing of "compelling reasons" for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of "good cause." *Id.* at 1097. In addition, sealing motions filed in this district must be "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b). A party moving to seal a document in whole or in part must file a declaration establishing that the identified material is "sealable." Civ. L.R. 79-5(d)(1)(A). "Reference to a stipulation or

protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.” *Id.*

II. DISCUSSION

The Court has reviewed the parties’ sealing motions and respective declarations in support thereof. The Court finds the parties have articulated compelling reasons to seal certain portions of most of the submitted documents. The proposed redactions are also narrowly tailored. The Court’s rulings on the sealing request are set forth in the tables below:

A. ECF 419

Identification of Documents to be Sealed	Description of Documents	Court’s Order
Arista’s Motion to Strike Expert Opinions and Testimony of Dr. Kevin C. Almeroth	Cisco does not seek to seal the highlighted portions.	DENIED.
Exhibit 1 to the Declaration of Ryan Wong in Support of Arista’s Motion to Strike Expert Opinions and Testimony of Dr. Kevin C. Almeroth (“Wong <i>Daubert</i> Declaration”) (Excerpts from the “Opening Expert Report of Kevin Almeroth Regarding Copy” dated June 3, 2016)	Paragraphs ¶¶ 83-86, 118, 119 and pages 437-661 (“Copying Exhibit 6”) contain information about Cisco’s source code. Paragraphs ¶¶ 73, 74, 78, 79, 112, 118, 138-142, 145, 147, 148, 152, 153, 157, 195, 203, 219 (and associated images on pages 107 through 115), 220, 239-242, 246, 250-52, 257 and footnotes 99, 102 contain information of Arista’s software and business strategies.	GRANTED as to Paragraphs ¶¶ 83-86, 118, 119 and pages 437-661; and ¶¶ 73, 74, 78, 79, 112, 118, 138-142, 145, 147, 148, 152, 153, 157, 195, 203, 219 (and associated images on pages 107 through 115), 220, 239-242, 246, 250-52, 257 and footnotes 99, 102; and DENIED as to remainder.
Exhibit 2 to the Wong <i>Daubert</i> Declaration (Excerpts from the “Rebuttal Expert Report of Kevin Almeroth” dated June 17, 2016)	Paragraphs ¶¶ 104, 134, 137, 138, 142, 143, 144-47, 149, 154 and footnotes 106, 112 contain information of Arista’s software, products, and business strategies, as well as discussion of a confidential ITC order.	GRANTED as to Paragraphs ¶¶ 104, 134, 137, 138, 142, 143, 144-47, 149, 154 and footnotes 106, 112; and DENIED as to remainder.
Exhibit 3 to the Wong <i>Daubert</i> Declaration (Excerpts from the deposition of Dr. Kevin	Testimony of Dr. Almeroth at 145:22-24 contains information regarding Arista’s	GRANTED as to 145:22-24, and 289:21-291:14; and DENIED as to remainder.

Almeroth)	customer information. Testimony at 289:21-291:14, contains information about Cisco's confidential technology.	
Exhibit 4 to the Wong <i>Daubert</i> Declaration (Cisco's Supplemental Objections and Responses to Defendant's Interrogatory No. 20)	Contains information regarding Cisco's technology and source code.	GRANTED.

B. ECF 422

Identification of Documents to be Sealed	Description of Documents	Court's Order
Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Page 2, lines 10-13; page 6, lines 10-26; page 7, lines 4-6 contain information of Arista's marketing and sales strategies.	GRANTED as to 2:10-13, 6:10-26, and 7:4-6; and DENIED as to remainder.
Exhibit A to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Information about Arista's and Cisco's sales, customers, competitive strategies.	GRANTED.
Exhibit B to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Portions of the document from 154:1-157:17, 157:18-166:19, 194:21-196:10 and 218:8-18 contain information about Cisco's sales strategies, competitive strategies and customers.	GRANTED as to 154:1-157:17, 157:18-166:19, 194:21-196:10 and 218:8-18; and DENIED as to remainder.
Exhibit C to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Contains parties' detailed confidential business information.	GRANTED.
Exhibit D to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Highlighted portions contain parties' detailed confidential business information.	GRANTED.
Exhibit E to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and	Contains detailed parties' confidential business information.	GRANTED.

1	Testimony of Dr. Judith A. Chevalier		
2	Exhibit F to the Declaration of Elizabeth K. McCloskey in Support of Arista's Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Contains confidential business, product, and customer information.	GRANTED.
3	C. ECF 426		
4	Identification of Documents to be Sealed	Description of Documents	Court's Order
5	Cisco's Motion to Exclude Expert Opinion Testimony From Arista's Expert Dr. John Black	Arista does not seek to seal the highlighted portions.	DENIED.
6	Cisco's Motion to Exclude Expert Opinion Testimony From Arista's Expert William M. Seifert	Arista does not seek to seal the highlighted portions.	DENIED.
7	Cisco's Motion to Exclude Expert Opinion Testimony From Arista's Expert Cate M. Elsten	Pages 4, 5, 6:3, and 7:7 contains Arista's confidential business and sales information.	GRANTED as to pages 4, 5, 6:3, and 7:7; and DENIED as to remainder.
8	Exhibit 1 to the Declaration of Andrew M. Holmes "Black Opening Report"	<p>Paragraphs ¶¶ 120, 123-125, 132, 161, 433, 438, 448-459, 461-471, 478-482, 498, 500-502, 504, 508, 510, 514, 515, 570, 580, 636, 689-691, 696, 700 and footnotes 32, 35, 40, and 128 contain information related to Cisco's source code, third-party source code, as well as Cisco's business information.</p> <p>Paragraph 397 contains confidential information related to Arista EOS software. Paragraphs ¶¶ 519, 525, and 678(i) contain information related to Arista's source code.</p> <p>Paragraphs ¶¶ 375-377 contain confidential information related to Juniper's software.</p>	GRANTED as to Paragraphs ¶¶ 120, 123-125, 132, 161, 375-377, 397, 433, 438, 448-459, 461-471, 478-482, 498, 500-502, 504, 508, 510, 514, 515, 519, 525, 570, 580, 636, 678(i), 689-691, 696, 700 and footnotes 32, 35, 40, and 128; and redacted portions on page 141, 142, and 143 of Exhibit A to non-party Dell's declaration, ECF 442; and DENIED as to remainder.

	Portions redacted on page 141, 142, and 143 of Exhibit A to non-party Dell's declaration, ECF 442, contain Dell's confidential customer information.	
Exhibit 2 to the Holmes Declaration "Black Rebuttal Report"	<p>Paragraphs ¶¶ 50-51, 55, 148, 155, 156, 159, 160, 165, and 170 contain information related to Cisco's source code, third-party source code, and confidential business information.</p> <p>Paragraphs ¶¶ 148, 155, 156, 160-166, and 169-171 contain confidential information related to Arista's source code.</p>	GRANTED as to Paragraphs ¶¶ 50-51, 55, 148, 155, 156, 159, 160-166 and 169-171; and DENIED as to remainder.
Exhibit 4 to the Holmes Declaration	Arista does not seek to seal this exhibit, which contains excerpts of Dr. Black's deposition transcript.	DENIED.
Exhibit 5 to the Holmes Declaration "Seifert Report"	<p>Paragraphs ¶¶ 90 (including footnote 78), 96 (including charts on Pages 43 and 44), 97 (including footnote 88), 98 (including footnotes 89-91), 99 (including footnote 92), 100(i), 100(ii) (including footnote 94), 100(iv) (including footnote 95), 100(v) (including footnote 97), 101, 103 (including footnote 106), 108, and 109 contain Arista's confidential sales and customer information.</p> <p>Portions of paragraph 79 contain confidential information of Juniper's software and trade secrets.</p>	GRANTED as to Paragraphs ¶¶ 90 (including footnote 78), 96 (including charts on Pages 43 and 44), 97 (including footnote 88), 98 (including footnotes 89-91), 99 (including footnote 92), 100(i), 100(ii) (including footnote 94), 100(iv) (including footnote 95), 100(v) (including footnote 97), 101, 103 (including footnote 106), 108, and 109; and portions of ¶ 79 relating to Juniper's software and trade secrets; and DENIED as to remainder.
Exhibit 6 to the Holmes Declaration	Pages 135-36 (13:42:25-13:43:52) contain Arista's confidential business information.	GRANTED as to pages 135-36 (13:42:25-13:43:52); and DENIED as to remainder.

1	Exhibit 7 to the Holmes Declaration "Elsten June 3, 2016 Report"	Pages 7, 9, 14, 15, 21-28, 32, and 33 contain Cisco's confidential business information.	GRANTED as to pages 7, 9, 14, 15, 17, 21-28, 32 and 33; and DENIED as to remainder.
2		Pages 9, 17, 22-23 contain Arista's confidential business, product and customer information.	
3	Exhibit 8 to the Holmes Declaration "Elsten Rebuttal Report"	Contains parties' confidential business and customer information.	GRANTED.
4	Exhibit 9 to the Holmes Declaration	58:2-65:25 contain information related to Cisco's customers and Cisco's confidential business information.	GRANTED as to 58:2-65:25; and pages 58-60, 62-65, 81, and 212-215; and DENIED as to remainder.
5		Pages 58-60, 62-65, 81, and 212-215 contain Arista's confidential customer and business information.	
6	Exhibit 10 to the Holmes Declaration	Contains Cisco's business information and competitive intelligence and related strategies.	GRANTED.
7	Exhibit 12 to the Holmes Declaration "Clark June 3, 2016 Report"	Paragraphs ¶¶ 170-191 contain information related to Juniper's software and trade secrets.	GRANTED as to ¶¶ 170-191; and DENIED as to remainder.
8	Exhibit 13 to the Holmes Declaration (Excerpts of the "Clark Rebuttal Report")	Arista does not seek to seal these excerpts of Dr. Clark's Rebuttal Report.	DENIED.

D. ECF 438

Identification of Documents to be Sealed	Description of Documents	Court's Order
Arista's <i>Corrected</i> Motion to Strike Expert Opinions and Testimony of Dr. Kevin C. Almeroth	Cisco does not seek to seal the highlighted portions.	DENIED.

E. ECF 462

Identification of Documents to be Sealed	Description of Documents	Court's Order
Arista's Opposition to Cisco's Motion to Exclude Expert Opinion Testimony of Dr. John	Highlighted text on page 8 at lines 25-26 contains Cisco's confidential litigation	GRANTED as to the highlighted text at 8:25-26; and DENIED as to remainder.

1	Black	settlement.	
2	Exhibit 4 to the Declaration of	Cisco does not seek to seal	DENIED.
3	Ryan Wong in Support of	these excerpts of Dr.	
4	Arista's Opposition to Exclude	Almeroth's deposition	
5	Expert Opinion Testimony of	transcript.	
6	John Black ("Wong Opp.		
7	Declaration") (Excerpts from		
8	the deposition transcript of Dr.		
	Kevin C. Almeroth, taken on		
	June 28, 2016)		
6	Exhibit 5 to the Wong Opp.	Cisco does not seek to seal	DENIED.
7	Declaration (Excerpts from the	these excerpts of Dr.	
8	"Rebuttal Expert Report of	Almeroth's Rebuttal Report.	
	Kevin Almeroth" dated June		
	17, 2016)		

F. ECF 467

10	Identification of Documents to be Sealed	Description of Documents	Court's Order
11	Arista's Opposition to Cisco's	Highlighted portions contain	GRANTED.
12	Motion to Exclude Expert	Arista's confidential business	
13	Testimony from Arista's	and product information.	
14	Expert Cate M. Elsten		
15		Highlighted text on page 8 at	
16		lines 1-4 contains Cisco's	
17		confidential business	
18		information.	
16	Exhibit A to the Declaration of	Cisco does not seek to seal this	DENIED.
17	Eduardo E. Santacana in	exhibit, which contains	
18	Support of Arista's Opposition	excerpts of Dr. Chevalier's	
	to Cisco's Motion to Exclude	deposition transcript.	
	Expert Testimony from		
	Arista's Expert Cate M. Elsten		

G. ECF 470

20	Identification of Documents to be Sealed	Description of Documents	Court's Order
21	Arista Network Inc.'s	Cisco did not file a declaration	DENIED.
22	Opposition to Cisco's Motion	in support of sealing the	
23	to Exclude Expert Opinion	highlighted portions of this	
	Testimony of William M.	exhibit that cite to Mr.	
	Seifert	Seifert's deposition transcript.	
24	Exhibit 1 to the Declaration of	Cisco did not file a declaration	DENIED.
25	Andrea Nill Sanchez in	in support of sealing this	
26	Support of Arista Network	exhibit, which contains	
27	Inc.'s Opposition to Cisco	excerpts of Mr. Seifert's	
	Systems, Inc.'s Motion to	deposition transcript.	
	Exclude Opinion Testimony of		
	William M. Seifert ("Exhibit		
	1")		
28	Exhibit 4 to the Declaration of	Excerpts from the Expert	GRANTED.

1	Andrea Nill Sanchez in Support of Arista Network Inc.'s Opposition to Cisco Systems, Inc.'s Motion to Exclude Opinion Testimony of William M. Seifert ("Exhibit 4")	Report of Judith A. Chevalier (submitted on June 24, 2016) contain Arista's confidential business information, such as marketing and sales strategies.	
2			
3			
4			
5	Exhibit 5 to the Declaration of Andrea Nill Sanchez in Support of Arista Network Inc.'s Opposition to Cisco Systems, Inc.'s Motion to Exclude Opinion Testimony of William M. Seifert ("Exhibit 5")	Excerpts from the Rebuttal Expert Report on Fair Use of Judith A. Chevalier (submitted on June 17, 2016) contain Arista's confidential customer and product information.	GRANTED.
6			
7			
8			
9			

H. ECF 475

10	Identification of Documents to be Sealed	Description of Documents	Court's Order
11			
12	Cisco's Opposition to Arista's Corrected Motion to Strike Expert Opinions and Testimony of Dr. Kevin C. Almeroth.	Highlighted text on page 4 at lines 7-13 and 16-20, page 7 at lines 26-28, page 8 at line 1, page 9 at lines 24-26, page 10 at lines 18-20 contains Arista's confidential product and customer information.	GRANTED as to highlighted text at 4:7-13, 4:16-20; 7:26-28; 8:1; 9:24-26; 10:18-20; and DENIED as to remainder.
13			
14			
15	Exhibit 1 to the Declaration of John M. Neukom in Support of Cisco's Opposition to Arista's Corrected Motion to Strike Expert Opinions and Testimony of Dr. Kevin C. Almeroth. ("Neukom Declaration")	Paragraphs ¶¶ 72-74 (including the image shown on Page 29) contains Arista's confidential product and business information.	Granted as to paragraphs ¶¶ 72-74, including the image on page 29; and DENIED as to remainder.
16			
17			
18			
19			
20			
21	Exhibit 2 to the Neukom Declaration	Arista does not seek to file under seal this exhibit, which contains excerpts of Dr. Almeroth's deposition transcript.	DENIED.
22			
23			
24	Exhibit 3 to the Neukom Declaration	Arista does not seek to file under seal this exhibit, which contains excerpts of Dr. Black's deposition transcript.	DENIED.
25			
26			

I. ECF 476

27	Identification of Documents to be Sealed	Description of Documents	Court's Order
28	Cisco's Opposition to	Highlighted text on page 1 at	GRANTED as to 1:24-26; 8:9-

1	Arista's Motion to Exclude Expert Opinion Testimony From Dr. Judith A. Chevalier	lines 24-26, page 8 at lines 9-13 and footnote 3, page 9 at lines 6-26, page 10 at lines 3-24 contains Arista's confidential product, customer, and business information.	13 & n.3; 9:6-26; 10:3-24; and DENIED as to remainder.
2			
3			
4	Exhibit 1 to the Declaration of Sara E. Jenkins in Support of Cisco's Opposition to Arista's Motion to Exclude Expert Opinion Testimony From Dr. Judith A. Chevalier	Excerpts from Anshul Sadana's deposition transcript contain Arista's confidential customer and product information.	GRANTED.
5			
6			
7			
8			

J. ECF 491

9			
10	Identification of Documents to be Sealed	Description of Documents	Court's Order
11	Defendant Arista Networks, Inc.'s Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Highlighted portions contain Arista's confidential software and business information.	GRANTED as to highlighted portions at 1:20, 24; 4:3-4; 5:9-11; and DENIED as to 1:13-14.
12		Cisco did not file a declaration in support of sealing the highlighted text at 1:13-14.	
13			
14			

K. ECF 494

15			
16	Identification of Documents to be Sealed	Description of Documents	Court's Order
17	Defendant Arista Networks, Inc.'s Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Kevin C. Almeroth	Highlighted portions on page 5 at lines 7-11 and line 17 contain Arista's confidential software, sales, and product information.	GRANTED as to the highlighted portions at 5:7-11 and 17; and DENIED as to remainder.
18		Cisco did not file a declaration in support of sealing the remaining highlighted portions.	
19			
20			
21			
22			

L. ECF 498

23			
24	Identification of Documents to be Sealed	Description of Documents	Court's Order
25	Cisco's Reply in Support of Its Motion to Exclude Expert Opinion Testimony From Arista's Expert Dr. John Black	Arista did not file a declaration in support of sealing this exhibit.	DENIED.
26			
27			
28	Cisco's Reply in Support	Arista did not file a declaration	DENIED.

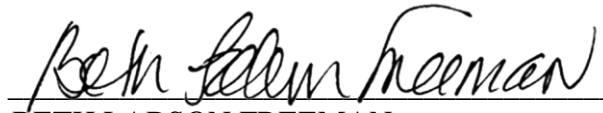
of Its Motion to Exclude Expert Opinion Testimony From Arista's Expert William M. Seifert	in support of sealing this exhibit.	
Cisco's Reply in Support of Its Motion to Exclude Expert Opinion Testimony From Arista's Expert Cate M. Elsten	Highlighted portions contain Arista's confidential product, sales, and customer information.	GRANTED.

III. ORDER

For the foregoing reasons, the sealing motions at ECF 419, 422, 426, 438, 462, 467, 470, 475, 476, 491, 494, 498 are GRANTED IN PART and DENIED IN PART. Under Civil Local Rule 79-5(e)(2), for any request that has been denied because the party designating a document as confidential or subject to a protective order has not provided sufficient reasons to seal, the submitting party must file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and no later than 10 days from the filing of this order.

IT IS SO ORDERED.

Dated: September 16, 2016


 BETH LABSON FREEMAN
 United States District Judge